Supreme Court, U.S.
FILED
DEC 4 1985
JOSEPH F. SPANIOL, JR.
CLERK

(5)

No. 85-794

In The

Supreme Court of the United States

October Term, 1985

PREUIT & MAULDIN, a partnership; and E. F. MAULDIN, individually and as Executor of estate of Leonard Preuit, deceased; and PREUIT MAULDIN,

Petitioners,

v.

SAMUEL JONES, JR.

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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BRIEF OF ALABAMA LEAGUE OF MUNICIPALITIES AS AMICUS CURIAE IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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20 pp

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CONSENT

This brief is filed with the written consent of all parties, such consent being on file with the Clerk of this Court.

INTEREST OF AMICUS CURIAE

Alabama League of Municipalities ("the League") is a voluntary association of cities and towns in the State of Alabama, with 401 of the approximately 435 municipalities in Alabama being members.

An issue of profound consequence for municipalities in Alabama (as well as all States) is presented by this case. The Eleventh Circuit Court of Appeals has held[1] that the statute of limitations to be applied in lawsuits under 42 U.S.C. §1983 is that governing common law "trespass" causes of action, which in Alabama is a 6-year statute of limitations.[2] This

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[1] Jones v. Preuit & Mauldin, 763 F.2d 1250 (11th Cir. June 21, 1985).

[2] Ala. Code §6-2-34(a).

imposes a substantial hardship on municipalities, which elect officials every 4 years.[3/] Local governments would be required to defend cases with the infirmities of faded memories, lost records, and perhaps the death of witnesses, succeeding administrations would be required to defend cases arising before they were elected, and municipal budgets would be impacted by suits filed up to 6 years later.

SUMMARY OF ARGUMENT

This Court, in Wilson v. Garcia, 471 U.S. _____, 85 L.Ed.2d 254, 107 S.Ct. 1938 (1985), established the uniform rule that the State statute of limitations to be applied to §1983 is that governing "a general remedy for injuries to personal rights." But the

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[3/] Ala. Code §11-46-21(a).

printer's ink was barely dry on Wilson before the Eleventh Circuit eschewed the Alabama statute of limitations on a general remedy for injuries to personal rights[4] and instead applied the specialized trespass statute of limitations.[5] For this result, the Court purported to apply Wilson but in fact accorded it no more than a passing nod on its way to establishing its own view of the statutes of limitations which ought to be used in §1983 lawsuits.

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[4] Ala. Code §6-2-39(a)(5) [recodified in January 1985 as §6-2-38(1)] provides a 1-year [extended to 2 years in January 1985] statute of limitations for "actions for any injury to the person or rights of another not arising from contract and not specifically enumerated in this section."

[5] Ala. Code §6-2-34(1) and (2) provide 6-year statutes of limitations for "Actions for any trespass to person or liberty, such as false imprisonment or assault and battery" and "Actions for any trespass to real or personal property."

This departure from Wilson is seriously in error and deserves review by the Supreme Court before it attracts any more departures from Wilson.

ARGUMENT

I.

THE COURT OF APPEALS ENGAGED IN ITS OWN RE-ANALYSIS OF WILSON

Wilson cannot be read as any charter for the Courts to engage in their own analysis of the essential nature of §1983 cases for purposes of the statute of limitations. To entertain any such notion would be precisely at cross-currents with the fact that "It is beyond any dispute at all that Justice Stevens, speaking for the majority of the Court in Wilson v. Garcia, intended to bring some sense of national uniformity into the process of selecting

the appropriate statute of limitations for section 1983 actions ---." Winston v. Sanders, 610 F.Supp. 176, 177 (C.D. Ill. 1985).

Having expressed its intention to promote "uniformity, certainty, and the minimization of unnecessary litigation", Wilson then defined the essential nature of all §1983 claims for statute of limitations purpose and held that the standard is to be "a general remedy for injuries to personal rights" and "general personal injury actions, sounding in tort."

The Court thus established once and for all that the essential nature of §1983 cases for statute of limitations purposes is "a general remedy for injuries to personal rights." No longer would the various Courts engage in their own separate analysis of the "essential nature" of §1983 claims.

All that is required, as Wilson plainly envisioned, is for a Court to apply the statute of limitations governing "a general remedy for injuries to personal rights."

If Wilson had been followed here, all that need have been done was the simple task of turning to the Alabama statute of limitations governing "a general remedy for injuries to personal rights." Such statute of limitations is the then 1-year (now 2-year) period governing "Actions for any injury to the person or rights of another not arising from contract and not specifically enumerated in this section."

But that simple and straightforward route which this Court mapped out in Wilson was not followed by the Eleventh Circuit. Instead, it embarked on its own re-analysis of the essential nature

of §1983 cases and, having done so, arrived at a different destination.

This departure from the Wilson methodology is plainly revealed by the fact that after recognizing Wilson determines the essential nature of §1983 claims, the Eleventh Circuit almost immediately reverted to its own re-analysis of the essential nature subject, including the self-explanatory heading "Essential Nature of Section 1983 Personal Injury Claims." By the precise process which this Court would have thought were put to rest in Wilson, the Eleventh Circuit went on to determine the State cause of action which it considered the most analogous to §1983 cases.

This re-analysis of the point which this Court decided in Wilson is not only evident from the opinion itself

but as well has been recognized and even followed by another Court. In Small v. City of Belfast, 617 F.Supp. 1567 (D.Me. 1985), the Court aligned itself with the Eleventh Circuit and in doing so observed of the case sub judice that "the Jones court carefully analyzed the 'essential nature' of a section 1983 claim---." The fundamental flaw is that no Court should be engaging in its own re-analysis, careful or not, because that has been done by this Court in Wilson, and all that is appropriate is to follow this Court's decision.

This is further illustrated by the Eleventh Circuit's reliance on State common law pleading concepts. In Wilson, this Court's criticisms of the former procedure included the point that "Almost every §1983 claim can be

favorably analogized to more than one of the ancient common-law forms of action, each of which may be governed by a different statute of limitations." Yet in this case decided only two months later, the Eleventh Circuit relied on Alabama's common law pleading concepts of trespass and trespass on the case. To have done so is not only at odds with the essential nature definition established by Wilson but as well with the fact that this Court explicitly rejected such State law concepts, pointing out that "Congress intended the characterization of § 1983 to be measured by federal rather than state standards."

The sum of it is that the Eleventh Circuit, apparently dissatisfied with the "simple approach" chosen by this Court in Wilson, set out to re-think

the subject for the Court by engaging in its own re-analysis of the essential nature of §1983 cases. Review by this Court is important without more in order to conform the decision to the Wilson precedent.

II.

THE SELECTION OF THE TRESPASS ANALOGY IS CONTRARY TO WILSON

The Eleventh Circuit's selection of the trespass statute was contrary to Wilson for the following reasons:

First, this Court was explicit in Wilson in defining the statute of limitations to be applied uniformly in §1983 cases. It is not to be particularized categories of statutes of limitations. It is to be the statute of limitations governing "a general remedy for injuries to personal rights."

For emphasis, this Court twice spelled it out:

> "Had the 42d Congress expressly focused on the issue decided today, we believe it would have characterized §1983 as conferring a general remedy for injuries to personal rights." (Emphasis supplied).
>
> * * *
>
> "General personal injury actions, sounding in tort, constitute a major part of the total volume of civil litigation in the state courts today, and probably did so in 1871 when §1983 was enacted."

It can be rationally assumed that when this Court used the word "general", it meant "general". In Wilson, as here, the forum State provides a statute of limitations for general causes of action for injuries to the person or rights of another. It was applied in Wilson. In contrast, it was not applied here but was rejected in favor of a specialized trespass

statute. To have done so cannot be reconciled with Wilson.

Second, the trespass statute selected by the Eleventh Circuit is logically implausible. A trespass, by definition, requires an intentionally committed act. W. T. Ratliff Co. v. Henley, 405 So.2d 141 (Ala. 1981). But a "general remedy for injuries to personal rights" - the definition established in Wilson - most assuredly encompasses more than merely such injuries as are alleged to be caused intentionally.

Third, this Court in Wilson implicitly rejected exactly the result reached by the Eleventh Circuit in the present case. In describing the plaintiff's claims in Wilson, the Court observed that "This §1983 claim is arguably analogous to distinct state

tort claims for false arrest, assault and battery, or personal injuries." When the Court went on to hold that all §1983 claims are to be regarded as general remedies for personal injuries for statute of limitations purposes, it plainly rejected any notion that they ought to be treated as false arrest or assault and battery claims. Yet that is precisely the result reached by the Eleventh Circuit's re-analysis.

III.

THE COURT SHOULD RESOLVE THE GROWING DIVERSITY OF VIEWS REGARDING THE MEANING OF WILSON

Just in the brief period of time since Wilson, a diversity of opinion has developed among the Courts regarding the intended meaning of the case, as illustrated by a recent issue of a publication designed to alert lawyers

to current problems (if not the answers) carrying the message "Courts Still Confused Over Statute of Limitations in 'Civil Rights' Cases", with the text including the Eleventh Circuit's decision in the present case.[6/]

On the one hand, the Eleventh Circuit's decision in the case sub judice has led several courts to disdain the standard of "a general remedy for injuries to personal rights" encompassing all §1983 actions and instead to select specialized trespass, intentional act, or assault and battery analogies. Gates v. Spinks, 771 F.2d 916 (5th Cir. 1985); Cook v. City of Minneapolis, 617 F.Supp. 461 (D. Minn.

[6/]5 Lawyers Alert 33 (October 28, 1985).

1985); Small v. City of Belfast, 617 F.Supp. 1567 (D. Me. 1985).

On the other hand, the opposite and in our view correct application of Wilson was adopted in Shorters v. City of Chicago, 617 F.Supp. 661 (N.D. Ill. 1985). There, following an extensive analysis of Wilson, the Court held the general remedy statute of limitations, pointing to Wilson's use of phrases such as "general personal injury actions, sounding in tort." But faithful as it is to Wilson, it is confined only to one judicial district, and it stands alone against the weight of the Fifth and Eleventh Circuits having rejected general remedy statutes of limitations and having selected specialized trespass and assault and battery statutes of limitations, which

is nothing more than a re-structuring of the Wilson decision.

There is accordingly a compelling need, before any more diversity of views develop among the Courts, for this Court to accept review of the present case in order to avoid the continuation of a new round of confusion and uncertainty regarding the result which was intended by Wilson.

CONCLUSION

Given the far-reaching importance of the question, and the substantial negative impact of the Eleventh Circuit's decision on all public employers which now face potential claims up to 6 years old, we urge the Court to grant the petition for certiorari in order to review and

correct the growing deviation from Wilson.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing brief for Amicus Alabama League of Municipalities has been served by United States mail, postage prepaid, on:

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This the 4th day of December, 1985.

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